

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Technip USA, Inc.
7323 Dauphin Island Parkway
Theodore, AL 36582**

CONSENT ORDER NO. 09-XXX-CHW

USEPA ID NUMBER ALR000040089

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and Technip USA, Inc. (hereinafter "Technip") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter "AHWMMA"), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Technip operates a pipeline manufacturing facility in Theodore, Mobile County, Alabama, that is assigned EPA Identification Number ALR000040089.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, and 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

4. On October 14, 2008, a representative of Technip contacted Department personnel via telephone and overnight mail. During the initial conversation, and in subsequent documents submitted to the Department on or about October 24, 2008, November 4, 2008, November 17, 2008, November 18, 2008, February 4, 2009, and February 5, 2009, Technip and their subcontractor Pipeline Induction Heat (hereinafter "PIH", EPA ID # ALR000043992), disclosed that from 2001 until 2007, Technip had failed to properly manage more than 10,000 kilograms of injection molded polyurethane (IMPU) waste generated at its facility located in Theodore, Alabama. Technip believed the material to be non-hazardous until site employees noted a mercury warning label on empty product drums. Two laboratory analyses conducted in September of 2008 indicated the material failed toxicity characteristic leaching procedure (TCLP) for mercury. According to Technip, since that time, the material has been managed as D009 hazardous waste. Based on a thorough file review and the information provided by Technip and PIH, the Department determined that Technip was in violation of the requirements of the ADEM Administrative Code, Division 14. The violations are as follows:

A. ADEM Admin. Code r. 335-14-3-.01(2) requires a person who generates a solid waste to determine if that waste is a hazardous waste. Technip failed to make a proper waste determination on its injection molded polyurethane waste before disposal at the Chastang Sanitary Landfill.

B. ADEM Admin. Code r. 335-14-3-.01(3)(a) prohibits a generator from treating, storing, disposing of, transporting, or offering for transportation hazardous waste without having received an EPA identification number from the Department. Hazardous waste from Technip's Theodore, Alabama facility was offered for transportation without Technip or its subcontractors first obtaining an EPA identification number from the Department. Technip did not notify as a Conditionally Exempt Small Quantity Generator until October 31, 2006, when it was assigned EPA ID number (ALR000040089); PIH received its EPA ID number (ALR000043992) on March 6, 2008.

C. ADEM Admin. Code r. 335-14-3-.01(3)(d) prohibits a generator from offering his hazardous waste to transporters that have not received an EPA identification

number and an Alabama Hazardous Waste Transport Permit or to treatment, storage, or disposal facilities that have not received an EPA identification number and an Alabama Hazardous Waste Facility Permit or interim status. The waste from pipe coating operations was disposed as solid waste. Technip has been unable to demonstrate that the waste was transported by a transporter that possessed an Alabama Hazardous Waste Transport Permit. According to Technip, this waste was subsequently disposed in the Chastang Sanitary Landfill, municipal solid waste or Subtitle D landfill that does not possess an Alabama Hazardous Waste Facility Permit or interim status.

5. On February 24, 2009, the Department issued a Notice of Violation to Technip citing the violations described above.

6. On April 2, 2009, Technip provided written responses to the Department's February 24, 2009 NOV. Based on the information provided in the submittals, the Department determined that Technip appeared to have adequately addressed the violations cited in the aforementioned NOV.

7. Technip consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein. Technip neither agrees nor disagrees with the Stipulations presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the AHWMMMA, has consented to the terms of this Consent Order.

8. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

TECHNIP'S CONTENTIONS

9. SERIOUSNESS OF THE VIOLATION - Technip had no reason to know of the mercury in its waste stream as the Material Safety Data Sheets (MSDS) from the manufacturer of the products used in the IMPU process failed to include mercury as a component of the

products. Further, industrial knowledge of the waste stream would not lead Technip to believe that mercury would be contained in the injection molded polyurethane. As such, Technip would have had no reason to question whether the transporter retained by its subcontractors, Serimax, or PIH or the facility to which the subcontractor sent the waste had either an Alabama Hazardous Waste Transport Permit or an Alabama Hazardous Waste Facility Permit.

10. STANDARD OF CARE - Technip agrees with the Department's assessment of Technip's Standard of Care.

11. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED - Technip received no economic benefit by sending the waste stream to a Class D landfill, as Technip's pricing to its customers includes the component of disposal as part of its invoicing process. Thus, the cost of disposal, regardless of whether hazardous waste or solid waste, is billed directly to the customers.

12. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT - The nature of the waste, as a non-permeable substance, and the fact that the majority of the waste was contained in industrial-grade plastic bags and thus not exposed to stormwater runoff or other waste by-products, would result in no harm to the environment or human health. Further, immediately upon discovering the hazardous nature of the waste, Technip instructed its subcontractor to handle and transport all future shipments of the IMPU waste to a permitted, hazardous waste facility.

13. HISTORY OF PREVIOUS VIOLATIONS - Technip agrees with the Department that there have been no prior violations from its facility.

14. THE ABILITY TO PAY - Technip has not alleged an inability to pay.

15. OTHER FACTORS - Technip took all appropriate actions to immediately address the waste disposal issues and spent significant costs for consultants and attorneys in handling these issues including:

- 1) having the IMPU waste tested numerous times using different laboratories;

2) instructing its contractor Serimax's coating subcontractor, PIH, to obtain an EPA ID number, proper employee training for hazardous waste handling, to dispose of the IMPU waste as hazardous in the future.

3) investigating the reason the MSDS sheets did not disclose the mercury content.

4) investigating each job conducted at the facility to determine whether IMPU was used in the coating process, and if so, how many joints were coated with the products, how much waste was generated per each joint and each flushing of the equipment, and calculating the total number of kilograms of waste sent offsite for all IMPU jobs;

5) having PIH conduct a "field test" of the exact equipment used to coat the joints to determine the exact amount of waste generated by the specific equipment used.

6) investigating all arrangers, transporters and waste disposal facilities used by Technip and/or its subcontractors for the IMPU waste and attempting to obtain records from all arrangers, transporters and disposal facilities in order to assess where the waste had been taken and whether there was any environmental impact from the disposal;

7) retaining two sets of consultants, Dr. Sudhir Desai and later, Weston Solutions, Inc., to not only review the waste handling processes for the IMPU waste and to provide input for the handling of the IMPU waste, but also to:

- a) review all waste processes to determine if each process, including the IMPU, was being appropriately handled under the Department regulations;
- b) verify the method of testing the IMPU waste by the two laboratories where the waste was sent to make sure the proper protocols were being used;
- c) send samples of all forms of waste generated at the site to a laboratory to ensure that all hazardous waste had been properly identified;
- d) review and improve IMPU waste handling procedures protocol;

- e) review and update the facility's Waste Management Plan;
 - f) determine on a technical basis whether there was any possibility that the IMPU waste would degrade and whether there was any possibility that it would have a negative impact on a Subtitle D landfill; and
 - g) verify the exact amount of IMPU waste generated over the course of time.
16. The Department neither admits nor denies Technip's contentions.

DEPARTMENT'S CONTENTIONS

17. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation.

18. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Technip failed to perform an adequate waste determination on injection molded polyurethane waste generated at its Theodore facility and subsequently sent those wastes to a solid waste landfill (which was not permitted to receive hazardous waste) for disposal, constituting a significant deviation from hazardous waste regulations.

B. THE STANDARD OF CARE: Upon discovering the alleged violations, Technip voluntarily informed the Department that the violations had occurred and promptly took actions to prevent their recurrence.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Technip avoided the expenses associated with sending hazardous wastes to a permitted treatment, storage, and/or disposal facility. Therefore, the violations may have conferred an economic benefit upon Technip.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There is no readily discernible evidence of irreparable harm to the environment or human health as a result of the alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on Department records, there is no record of historic AHWMMMA violations attributable to Technip.

F. THE ABILITY TO PAY: Technip has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$90,000.00 is appropriate and consistent with the historical penalty range imposed by the Department for similar violations, as follows:

<u>Violation Type</u>	<u>Historical Penalty Range for Violation Type</u>
General Facility Standards	\$100-\$25,000

19. Technip neither admits nor denies the Department's contentions.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, Technip, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Technip agree to enter into this Consent Order with the following terms and conditions:

A. Technip agrees to pay to the Department a civil penalty in the amount of \$90,000 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Technip agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference Technip's name and address and the ADEM Administrative Order Number of this action.

C. That, immediately upon the effective date of this Consent Order and henceforth, Technip agrees to make a proper waste determination regarding all solid wastes generated on site and to dispose of such wastes in accordance with the regulatory requirements of ADEM Admin. Code r. 335-14-3-.01(2).

D. That, immediately upon the effective date of this Consent Order and henceforth, Technip agrees to refrain from treating, storing, disposing of, transporting, or offering for transportation hazardous waste without first obtaining and then maintaining an EPA identification number from the Department in accordance with ADEM Admin. Code r. 335-14-3-.01(3)(a).

E. That, immediately upon the effective date of this Consent Order and henceforth, Technip agrees to refrain from offering its hazardous waste to transporters that have not received an EPA identification number and an Alabama Hazardous Waste Transport Permit or to treatment, storage, or disposal facilities that have not received an EPA identification number and an Alabama Hazardous Waste Facility Permit or interim status in accordance with ADEM Admin. Code r. 335-14-3-.01(3)(d).

F. That, immediately upon the effective date of this Consent Order and henceforth, Technip agrees to comply with all terms, conditions, and limitations of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

G. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

H. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order, whether said violations are civil or criminal and whether they arise under state or federal laws.

I. Technip agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

J. For purposes of this Consent Order only, Technip agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Technip also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Technip agrees to be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Technip, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Technip) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. Technip agrees that this information must be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of Technip, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

K. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; Technip agrees to not object to such future orders, litigation, or enforcement action based on the

issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

L. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Technip does hereby waive any hearing on the terms and conditions of this Consent Order.

M. The parties agree that this Consent Order shall not affect Technip's obligation to comply with any Federal, State, or local laws or regulations.

N. The parties agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

O. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

P. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

Q. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Technip of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Technip USA, Incorporated

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

Deanna Goodwin
(Printed Name)

CFO
(Printed Title)

June 30, 2009
(Date Signed)

Onis "Trey" Glenn, III
Director

(Date Executed)